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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )

Federal-State Joint Board on )  
Universal Service )

CC Docket No. 96-45

## ORDER AND ORDER ON RECONSIDERATION

**Adopted:** July 10, 2003

**Released:** July 14, 2003

By the Commission: Chairman Powell issuing a separate statement; Commissioners Abernathy and Adelstein issuing a joint statement; Commissioner Copps approving in part, concurring in part, and issuing a separate statement; Commissioner Martin approving in part, dissenting in part, and issuing a separate statement.

### I. INTRODUCTION

1. In this Order, the Commission adopts the Federal-State Joint Board on Universal Service (Joint Board) recommendation to retain the existing list of services supported by federal universal service. We agree with the Joint Board that, with the possible exception of equal access, no new service satisfies the statutory criteria contained in section 254(c) of the Communications Act of 1934, as amended ("Act") or should be added to the list of core services. The Joint Board was unable to reach agreement on whether equal access should be added to the list of supported services and made no recommendation regarding this service. Because critical arguments in favor of adding equal access are related to the eligible telecommunications carrier (ETC) process and calculation of support for competitive ETCs, both of which are within the scope of the *Portability Proceeding*, we make no decision regarding equal access at this time.<sup>1</sup>

<sup>1</sup> *Federal-State Board on Universal Service Seeks Comment on The Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, Public Notice, CC Docket No. 96-45, FCC 03J-1 (rel. Feb. 7, 2003) ("*Portability Proceeding*").

## II. BACKGROUND

2. Section 254 of the Act codifies the Commission's historic commitment to advancing universal service by ensuring the affordability and availability of telecommunications services for all Americans.<sup>2</sup> Specifically, section 254(c) directs the Joint Board to recommend and the Commission to establish a definition of the telecommunications services that will be supported by the federal universal support mechanisms.<sup>3</sup> Section 254(c) states that when adopting this list of telecommunications services, the Joint Board and Commission "shall consider" whether the service is: (1) essential to education, public health, or public safety; (2) subscribed to by a substantial majority of residential consumers; (3) being deployed by telecommunications carriers in public telecommunications networks; and (4) consistent with the public interest, convenience and necessity.<sup>4</sup> The Commission has concluded that each of these criteria must be considered, "but not each necessarily met, before a service may be included within the general definition of universal service, should it be in the public interest."<sup>5</sup>

3. Section 254(b) also sets forth principles upon which the Joint Board and Commission shall base policies for the preservation and advancement of universal service. These principles include: 1) quality services should be available at just, reasonable and affordable rates; 2) access to advanced telecommunications and information services should be provided in all regions of the Nation; and 3) consumers in all regions of the Nation should have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.<sup>6</sup> In addition, section 254(b) permits the Joint Board and Commission to consider other principles that they deem necessary to protect the public interest.<sup>7</sup> The Joint Board recommended and the Commission concluded that another principle not identified in section 254(b), competitive neutrality, should also be considered.<sup>8</sup> The Joint Board and Commission have stated that universal service policies should strike a fair and reasonable balance among all of these principles.

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<sup>2</sup> 47 U.S.C. § 254.

<sup>3</sup> 47 U.S.C. § 254(c).

<sup>4</sup> *Id.*

<sup>5</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8809, para. 61 (1997) ("*First Report and Order*").

<sup>6</sup> See 47 U.S.C. § 254(b).

<sup>7</sup> *Id.*

<sup>8</sup> *First Report and Order*, 12 FCC Rcd at 8801, paras. 46-48.

4. Section 254(e) states that only eligible telecommunications carriers (ETCs) designated pursuant to section 214(e) shall be eligible to receive federal universal service support.<sup>9</sup> To be designated an ETC pursuant to section 214(e), a carrier must offer throughout its service area “the services that are supported by Federal universal service support mechanisms under section 254(c).”<sup>10</sup> Thus, providing the services included within the definition of supported services is a prerequisite to being eligible for federal support. Moreover, section 254(e) states that ETCs shall use support “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” Pursuant to section 254(b), federal universal service funds must be used to support the services included within the “definition of the services that are supported by Federal universal service support.”<sup>11</sup>

5. In the *Universal Service First Report and Order*, the Commission defined the “core” services to be supported by universal service as follows: single-party service; voice grade access to the public switched network; DTMF signaling or its functional equivalent; access to emergency services; access to operator services; access to interexchange services; access to directory assistance; and toll limitation services for qualifying low-income consumers.<sup>12</sup>

6. Section 254(c) authorizes the Joint Board to recommend and the Commission to adopt modifications to the list of supported services “from time to time.” On December 21, 2000, the Commission asked the Joint Board to review the definition of “core” services supported by the Commission’s high-cost and low-income universal service support mechanisms under section 254(c)(1) of the Act.<sup>13</sup> The Joint Board released a public notice seeking comment on the services, if any, that should be added to or removed from the list of core services on August 21, 2001.<sup>14</sup> On July 10, 2002, the Joint Board released a *Recommended Decision* which recommended that the Commission retain the existing list of services supported by universal service. However, the Joint Board was unable to reach agreement regarding whether equal access, the ability to access the presubscribed long distance carrier of the customer’s choice by dialing 1+ the phone number, satisfies the statutory criteria and should be recommended for inclusion. The *Recommended Decision* presented two opposing positions on this issue. On February 25, 2003, the Commission released a Notice of Proposed Rulemaking (*Notice*) seeking

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<sup>9</sup> 47 U.S.C. § 254(e).

<sup>10</sup> 47 U.S.C. § 214(e).

<sup>11</sup> 47 U.S.C. § 254(b).

<sup>12</sup> *First Report and Order*, 12 FCC Rcd at 8809, para. 61.

<sup>13</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 25257, 25258, para. 3 (2000).

<sup>14</sup> *Federal-State Joint Board on Universal Service Seeks Comment on Review of the Definition of Universal Service*, CC Docket No. 96-45, Public Notice, FCC 01-J-1, 66 FR 46461 (rel. Aug. 21, 2001) (“Public Notice”).

comment on the *Recommended Decision* of the Joint Board.<sup>15</sup> Twenty-eight parties filed comments, and 14 parties filed replies in response to the *Notice*.<sup>16</sup>

### III. DISCUSSION

7. We adopt the Joint Board's recommendation to retain the existing list of services supported by universal service. We also agree with the Joint Board's general conclusion that no new service satisfies the statutory criteria contained in section 254(c) and that the public interest would not be served by expanding the list of supported services at this time. We agree with the Joint Board that the current list of supported services strikes the right balance between ensuring the availability of fundamental telecommunications services to all Americans and maintaining a sustainable universal service fund. In its *Recommended Decision*, the Joint Board discussed several specific services and proposals -- advanced or high-speed services, unlimited local usage, soft dial tone or warm line services, prepaid calling plans, payphone lines, Braille TTY and two line voice carry over, N11 codes, toll or expanded area service, modifying voice grade access bandwidth, transport costs, rural wireless ETC category, and technical and service quality standards -- which we address more fully below. The Joint Board was unable to reach agreement, however, on whether to recommend including equal access in the list of core services. We make no decision regarding equal access at this time and will address it in the context of the *Portability Proceeding*.

#### A. Advanced or High-Speed Services

8. Consistent with the Joint Board's *Recommended Decision*, we decline to expand the definition of supported services to include advanced or high-speed services at this time.<sup>17</sup> Although we agree with commenters, such as the National Telecommunications Cooperative (NTCA) and Valor Communications, that broadband services are becoming increasingly important for consumers in all regions of the nation, we also agree with the Joint Board and the vast majority of commenters that high-speed and advanced services currently do not meet the Act's criteria for inclusion on the list of supported services.<sup>18</sup>

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<sup>15</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking, 18 FCC Rcd 2932 (2003) ("*Notice*").

<sup>16</sup> See Appendix A for a list of commenters.

<sup>17</sup> *Recommended Decision* at para. 11.

<sup>18</sup> We utilize the term "advanced services" to describe services and facilities with an upstream (customer to provider) and downstream (provider-to-customer) transmission speed of more than 200 kbps. In addition, we use the term "high-speed" to describe services with over 200 kbps capability in at least one direction. *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Third Report, 17 FCC Rcd 2844, para. 7 (2002) ("*Third 706 Report*"). We note that it is not clear whether the Joint Board's *Recommended Decision* addresses advanced Internet access services as well as advanced transmission services.

9. Like the Joint Board, the Commission recognizes that high-speed and advanced services may enable subscribers to access Internet resources used for educational, public health, or public safety purposes. At this time, however, we do not find that advanced or high-speed services are essential to reaching these resources. We agree with the Joint Board and most commenters that although advanced and high speed services are useful for educational, public health and public safety purposes, they are not essential for these purposes as set out by section 254(c).<sup>19</sup>

10. Although telecommunications carriers increasingly are deploying infrastructure capable of providing advanced and high-speed services,<sup>20</sup> the Commission agrees with the Joint Board and commenters that advanced services are not subscribed to by a substantial majority of residential consumers.<sup>21</sup> In fact, the Commission's own data shows that as of December 31, 2002, there were approximately 17.4 million high-speed lines serving residential and small business subscribers, which represents 16 percent of all U.S. households.<sup>22</sup> Additionally, according to another study, only 56.5 percent of all households as of September 2001 had computers and could even benefit from advanced service offerings.<sup>23</sup> Furthermore, the Florida Public Service Commission (PSC) states that there were 18.6 million broadband subscribers at the end of 2002 and, assuming all of these subscribers are residential, this would represent only 17 percent of American households.<sup>24</sup>

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<sup>19</sup> See *Recommended Decision* at para. 12. See also, e.g. AT&T Comments at 2; Dobson Comments at 6; MCI Comments at 2; New York Department of Public Service Comments at 4; Qwest Comments at 1; SBC Comments at 4. But see, Valor Comments at 5.

<sup>20</sup> We note that the Commission previously concluded that market forces have encouraged the deployment of advanced and high-speed services on a reasonable and timely basis. See *Third 706 Report*. The Florida Commission notes that it took just five years for the marketplace to make broadband available to 80 percent of American households. Florida Public Service Commission Comments at 4 (citing to *Broadband Services in the United States: An Analysis of Availability and Demand*, October 2002, Prepared by the Florida Public Service Commission Office of Market Monitoring and Strategic Analysis on Behalf of the Federal-State Joint Conference on Advanced Telecommunications Services.) See also *High Speed Services for Internet Access: Status as of December 31, 2002*, Report, Wireline Competition Bureau, Industry Analysis and Technology Division (rel. June 10, 2002) (*High-Speed Service Report*) at Table 12.

<sup>21</sup> *Recommended Decision* at para. 13. See, e.g., AT&T Comments at 2. See also, Dobson Comments at 6-7; MCI Comments at 3; NASUCA Comments at 5; New York Department of Public Services Comments at 3-4; Qwest Comments at 1-2; SBC Comments at 5; Verizon Comments at 3.

<sup>22</sup> *High-Speed Service Report* at Tables 3 and 4. The number of lines providing advanced service is even smaller, 10.8 million lines at the end of 2002, representing 10 percent of U.S. households.

<sup>23</sup> See U.S. Department of Commerce, Economics and Statistics Administration, National Telecommunications and Information Administration, *A Nation Online: How Americans are Expanding Their Use of the Internet* (Feb. 2002) at 39-40 ("A Nation Online").

<sup>24</sup> Florida PSC Comments at 4. The Florida PSC asserts that although subscription rates are increasing for broadband services it will be several more years before a substantial majority of household subscribe to broadband services. Florida PSC Comments at 5.

11. In addition, comments in response to the *Notice*, like those in response to the Joint Board's *Public Notice*, suggest that adding advanced or high-speed services to the definition of supported services would be contrary to the public interest due to the high cost of requiring the deployment of such services.<sup>25</sup> If advanced or high-speed services were added to the list of supported services, it could drastically increase the financial burden placed on carriers and, ultimately, consumers because all eligible telecommunications carriers would be required to offer such services in order to receive support.<sup>26</sup> We agree with the Joint Board that the public interest would not be served by substantially increasing the support burden by expanding the definition of universal service to include these services.

12. Moreover, we agree with the Joint Board that adding advanced or high-speed services to the list could jeopardize support currently provided to some carriers.<sup>27</sup> While many small rural carriers have made significant progress in deploying broadband infrastructure,<sup>28</sup> they do not yet offer advanced or high speed services ubiquitously throughout their service area.<sup>29</sup> This would reduce the number of providers eligible for universal service support and might reduce consumer choice in rural and high-cost areas.

13. Although we conclude that advanced or high-speed services do not satisfy the statutory criteria necessary for inclusion in the definition of supported services at this time, the Commission maintains its commitment to ensuring that appropriate policies are in place to encourage the successful deployment of infrastructure capable of delivering advanced and high-speed services. Indeed, section 254(b) of the Act provides that the Joint Board and the Commission shall base policies for the preservation and advancement of universal service on several principles, including the ability to access advanced telecommunications and information services in all regions of the nation.<sup>30</sup> Accordingly, we continue to support the Commission's prior conclusion that "our universal service policies should not inadvertently create barriers to the provision or access to advanced services, and. . . that our current universal service system does

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<sup>25</sup> Florida PSC Comments at 4-5 (citing to National Exchange Carrier Association, NECA Rural Broadband Cost Study – Executive Summary (2000) at 2 which estimates that it would cost \$10.9 billion to upgrade the rural study area lines in NECA's common line pool to DSL capability to meet an assumed demand of only 20 percent of the population). MCI Comments at 3 (also citing to the NECA study). Qwest says it would cost approximately \$2 billion to offer DSL throughout its service areas in four states – Colorado, South Dakota, Washington and Wyoming. Qwest Comments at 2, n.8.

<sup>26</sup> See Dobson Comments at 8; Verizon Comments at 3.

<sup>27</sup> *Recommended Decision* at para. 17.

<sup>28</sup> See *High-Speed Services Report* at table 14 (60 percent of lowest density zip codes had at least one high-speed subscriber in December 2002, compared to 27 percent for December 2000).

<sup>29</sup> See, e.g., MCI Comments at 4; Verizon Comments at 3. See also *High-Speed Services Report* at Table 14 (40 percent of the lowest density zip codes do not have at least one high-speed subscriber).

<sup>30</sup> See U.S.C. § 254(b).

not create such barriers.”<sup>31</sup> Thus, even though advanced services are not directly supported by federal universal service, “[Commission] policies do not impede the deployment of modern plant capable of providing access to advanced services.”<sup>32</sup> We recognize that the network is an integrated facility that may be used to provide both supported and non-supported services. We believe that our policy of not impeding the deployment of plant capable of providing access to advanced or high-speed services is fully consistent with the Congressional goal of ensuring access to advanced telecommunications and information services throughout the nation.

## **B. Unlimited Local Usage**

14. The Commission adopts the Joint Board recommendation that unlimited local usage should not be added to the list of supported services.<sup>33</sup> We agree with the Joint Board and the vast majority of the commenters that unlimited local usage is not essential to education, public health or public safety.<sup>34</sup> We also agree with the Joint Board that adding it to the list would not serve the public interest because it could hinder states’ ability to require local metered pricing for local service. As the Joint Board noted, states may require or encourage local metered service because it may, for example, encourage subscribership among low-income or low-volume users.<sup>35</sup> Adding a national local usage requirement, however, would preclude this type of experimentation by the states. We agree with AT&T that states are in a better position to determine whether unlimited local usage offerings are beneficial in particular circumstances.<sup>36</sup> Finally, we note that the Joint Board found the record to be inadequate to determine whether adoption of such a requirement would provide a competitive advantage to wireline carriers, due to the different cost structures of wireless and wireline technologies.<sup>37</sup> No party provided additional information to address this issue in response to the *Notice*. Accordingly, we concur with the Joint Board’s recommendation regarding unlimited local usage.

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<sup>31</sup> *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 96-45, 00-256, Fourteenth Report and Order, Twenty Second Order on Reconsideration, 16 FCC Rcd 11244, 1322, para. 199 (2001) (“*Fourteenth Report and Order*”).

<sup>32</sup> *Id.* at 11323, para. 200.

<sup>33</sup> *Recommended Decision* at para. 43.

<sup>34</sup> *See, e.g.*, AT&T Comments at 8; Dobson Comments at 12.

<sup>35</sup> *See, Recommended Decision* at para 43 (citing to Reference Book of Rates, Price indices, and Household Expenditures for Telephone Service, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, July 2002). *See also*, Vermont PSB Tariff No. 1, § 4.13 at p. 21 (effective July 7, 1998); Verizon, New York, PSC NY No. 2 – Communications, Section C.

<sup>36</sup> AT&T Comments at 8.

<sup>37</sup> *Recommended Decision* at para. 45.

15. We are not persuaded by comments filed by the National Association of State Utility Consumer Advocates (NASUCA) and the Montana Universal Service Task Force (MUST) that unlimited local usage should be added to the list. NASUCA and MUST assert unlimited local usage should be included in the definition of supported services simply because it is widely available and subscribed to by a majority of residential consumers when offered.<sup>38</sup> They believe that concerns regarding the competitive neutrality of such a requirement should not outweigh the fact that it is provided to many, if not most, residential consumers. Both parties, however, fail to consider all of the statutory criteria. MUST does not consider, much less rebut, the Joint Board's finding that unlimited local usage is not essential to education, public health and public safety. Moreover, both NASUCA and MUST fail to consider that the Joint Board concluded it would preclude state experimentation with calling plans and, therefore, not serve the public interest. Based on our consideration of all of the factors, specifically that it is not essential, that it would not serve the public interest, and that we have no basis to determine whether it is competitively neutral, we find that unlimited local usage should not be added to the list of core services at this time.

**C. Soft Dial Tone/Warm Line Service.**

16. The Commission agrees with the Joint Board that the definition of the services supported by universal service should not be expanded to include soft dial tone/warm line service.<sup>39</sup> Soft dial tone/warm line service enables a consumer without local service to utilize an otherwise disconnected line to contact emergency services and the local exchange carrier's central business office. Such services, however, are not subscribed to by any residential consumers. Additionally, we find the record does not contain sufficient information to indicate that adding soft dial tone/warm line service to the list of supported services would serve the public interest. In response to the *Notice*, no commenter provided estimates of the cost of adding soft dial tone or warm line service to the list of supported services or addressed in detail the implementation and administration of such a requirement.

17. Although we agree with USCCB *et al.* that soft dial tone/warm line service can improve the ability of certain low-income consumers to reach emergency services,<sup>40</sup> we also agree with the Joint Board that states are in a better position to establish these programs because states maintain closer ties to local public safety organizations.<sup>41</sup> The vast majority of commenters

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<sup>38</sup> NASUCA Comments at 4; MUST Comments at 7.

<sup>39</sup> *Recommended Decision* at para 28.

<sup>40</sup> United States Conference of Catholic Bishops, Alliance for Community Media, Appalachian People's Action Coalition, Center for Digital Democracy, Community Technology Institute, Consumer Action, Consumer Federation of America, Consumers Union, Edgemont Neighborhood Coalition, Migrant Legal Action Program, National Coalition for the Homeless, and National Community for Voicemail Federation ("USCCB *et al.*") filed joint comments in response to the *Notice*.

<sup>41</sup> *Recommended Decision* at para. 28.



support the Joint Board's recommendation and believe the establishment of soft dial tone or warm line programs would be better left to the individual states.<sup>42</sup> In fact, the New York Department of Public Service stated that a national solution, and the commitment costs that would be incurred, would conflict with its state program and eliminate the flexibility required to meet local needs.<sup>43</sup> Accordingly, we adopt the Joint Board's recommendation that these services not be added to the list of supported services at this time. However, given the importance of such services, we do agree with NASUCA that we should continue to monitor the development of state soft dial tone and warm line programs.<sup>44</sup>

#### D. Prepaid Calling

18. The Commission agrees with the Joint Board that the services supported by universal service should not be expanded to include prepaid services.<sup>45</sup> In response to the *Notice*, USCCB *et al.* proposes to add prepaid services generally to the list of supported services.<sup>46</sup> It argued its proposal -- which encompasses wireline and wireless technologies -- meets the section 254(c) criteria and is competitively neutral.

19. Based on the record before us, USCCB *et al.*'s proposal does not appear to meet three of the statutory criteria.<sup>47</sup> First, the record does not indicate that a substantial majority of residential consumers subscribe to prepaid services. Although we agree with USCCB *et al.* that consumers receive the same telecommunications functionalities, *i.e.* voice grade access to the public switched network, regardless of when they pay for services, pre- and postpaid services utilize different billing practices. USCCB *et al.* has failed to provide any information regarding the number of consumers who select the prepaid billing option. Second, no party has submitted information in the record regarding the extent to which wireline and wireless carriers have billing systems capable of providing prepaid services, so the record is insufficient to determine whether carriers have deployed prepaid service billing equipment in their networks.

20. Third, we question whether adding prepaid services to the list of supported services would be in the public interest.<sup>48</sup> The record does not contain information about how much it would cost for carriers that do not already have prepaid functionalities to acquire such

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<sup>42</sup> AT&T Comments at 8; Dobson Comments at 9; New York Department of Public Services Comments at 5; SBC Comments at 7.

<sup>43</sup> New York Department of Public Services Comments at 5.

<sup>44</sup> NASUCA Comments at 6-7.

<sup>45</sup> *Recommended Decision* at para. 38-39. *See also*, Dobson Comments at 11; NASUCA Comments at 5.

<sup>46</sup> USCCB *et al.* Comments at 14.

<sup>47</sup> *See, e.g.*, MCI Reply Comments at 2.

<sup>48</sup> *See* Dobson Comments at 11-12; USTA Comments at 3-4.

capabilities. Therefore, it is difficult to balance implementation costs with the potential benefits of increased subscribership. In addition, NASUCA asserts that because the requirement would apply to all ETCs, it would require some carriers that serve areas with high penetration rates to implement billing changes without any significant benefit.<sup>49</sup> Because the record does not indicate whether wireline carriers have systems equipped for prepaid plans, we also are concerned that USCCB *et al.*'s proposal may place wireline carriers at a competitive disadvantage vis-à-vis wireless carriers that may already offer prepaid plans. NASUCA also points out that prepaid pricing plans today are often significantly higher than those for post-paid services, and, therefore, may not be within the financial reach of some consumers.<sup>50</sup> For these reasons, we conclude that prepaid services should not be added to the list of supported services.

### E. Payphone Lines

21. We agree with the Joint Board that payphone lines should not be included in the definition of supported services at this time.<sup>51</sup> Although payphones play an important role in the public communications network,<sup>52</sup> we are persuaded by the Joint Board's finding that payphone lines are not subscribed to by a substantial majority of residential consumers. In addition, we agree with the Joint Board that the record is insufficient to determine whether adding payphone lines to the list of supported services would serve the public interest. There is no evidence in the record that additional federal support for payphone lines in high cost areas is needed for all payphone lines or would be necessary to ensure the continued availability of particular payphones. Moreover, including payphones in the list of core services could reduce the number of potential competitive providers of the core services because many competitive LECs and CMRS carriers do not offer payphone service throughout their service areas and would be ineligible for ETC designations. No party filed comments in response to the *Notice* in favor of adding payphone lines to the definition of supported services or supplemented the record

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<sup>49</sup> NASUCA Reply Comments at 11.

<sup>50</sup> NASUCA Reply Comments at 11.

<sup>51</sup> *Recommended Decision* at paras. 47-50. The Joint Board also recommended that the Commission initiate a Notice of Inquiry regarding the current status of payphones. We decline to do so at this time. We note that, pursuant to section 276(b)(2), the Commission has encouraged states to create public interest payphone programs to ensure the availability of payphones that are necessary for public health, safety and welfare reasons. If interested parties believe that a state is not supporting public interest payphones fairly and equitably, such party may file a petition with the Commission asserting that the state is not providing for payphones in accordance with section 276(b)(2). See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Petition of Public Telephone Council to Treat Bell Operating Company Payphones as Customer Premises Owners and Presubscribed Operator Services Providers, Petition of California Payphone Association to Amend and Clarify Section 68.2(a) of the Commission's Rules, Amendment of Section 69.2(m) and (ee) of the Commission's Rules to Include Independent Public Payphones Within the "Public Telephone" Exemption from End User Common Line Access Charges*, Report and Order, CC Docket Nos. 96-128, 91-35, 11 FCC Rcd 20541, 20677-83.

<sup>52</sup> See *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, Order on Reconsideration, CC Docket Nos. 96-262, 94-1, FCC 03-139 (rel. June 25, 2003) at para. 8.

analyzed by the Joint Board. Therefore, we find the record is insufficient to support the addition of payphone lines to the list of core services.

#### **F. Braille TTY and Two Line Voice Carry Over**

22. We agree with the Joint Board that the list of core services should not be expanded to include Braille TTYs and two line voice carry over (2LVCO).<sup>53</sup> Braille TTYs are equipment used to print text messages in Braille for people who are deaf-blind, and 2LVCO allows hearing impaired consumers to read text messages and respond verbally to a relay operator. 2LVCO is a service that hearing-impaired consumers provide for themselves by purchasing a special TTY and combining it with a second line and conference calling. No commenter in response to the Commission's *Notice* argued in favor of adding either to the list of supported services.

23. Like the Joint Board, we find that Braille TTYs, which are customer premises equipment, are ineligible for universal service support because section 254(c) expressly limits the definition of universal service to "telecommunications services." Moreover, given the lack of information on the costs of implementing the proposal to make 2LVCO a supported service, we agree with the Joint Board and find the record insufficient to add this service to the list of supported services at this time. We remain committed to exploring alternative mechanisms to ensure the accessibility of telecommunications services for persons with disabilities.

#### **G. N11 Codes**

24. We adopt the Joint Board's recommendation that N11 codes, with the exception of 911 services, do not meet the statutory criteria and, therefore, should not be added to the definition of supported services.<sup>54</sup> N11 codes are abbreviated dialing arrangements of which the first digit may be any digit other than 0 or 1, and the last two digits are both 1. These codes are used to enable callers to complete telephone calls to various services that require the dialing of a seven or ten digit telephone number. In order for consumers to access these services using the N11 code, the telephone network must be pre-programmed to translate the three-digit code into the appropriate seven or ten-digit telephone number to route the call. The Joint Board found that N11 codes are not subscribed to by a substantial majority of residential consumers and are not essential for education, public health, or public safety because consumers may reach the services by dialing the seven or ten digit number.<sup>55</sup> In response to the Commission's *Notice*, no commenter argued in favor of adding N11 services to the list of supported services. Therefore, we agree with the Joint Board's recommendation and find that N11 services should not be added to the list of supported services.

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<sup>53</sup> *Recommended Decision* at paras. 52-54.

<sup>54</sup> *Recommended Decision* at para. 66.

<sup>55</sup> *Recommended Decision* at para. 66.

## H. Toll or Expanded Area Service

25. We agree with the Joint Board that the definition of supported services should not be expanded to include toll or expanded area services.<sup>56</sup> The Joint Board found the record insufficient to warrant addition of toll or expanded area services. Specifically, the record failed to identify the extent to which limited local calling areas pose a barrier for certain consumers to reach essential services, the cost of the remedy and what critical services if any should be supported. No commenter argued that these services should be added to the list in response to the Commission's *Notice* or supplemented the record analyzed by the Joint Board. Therefore, like the Joint Board, we find the record insufficient to add these services to the list of supported services at this time.<sup>57</sup>

## I. Modifying Voice Grade Access Bandwidth

26. We agree with the Joint Board that the existing definition of voice grade access to the Public Switched Telephone Network (PSTN), which provides for a minimum bandwidth of 300 to 3,000 Hertz, should be retained.<sup>58</sup> Several commenters representing small and rural LECs, in response to the Joint Board *Public Notice*, proposed to modify the definition to 300 to 3,500 Hertz, with the goal of improving dial-up modem speeds in rural areas.<sup>59</sup> However, the record before the Joint Board was insufficient to demonstrate that the proposed modification would actually increase dial-up modem speeds in any areas. No commenter in response to the *Notice* argued in favor of this modification or augmented the record on this issue. We are persuaded by the Joint Board's conclusion that carriers should not be required to invest additional funds in mature narrowband technologies, particularly when such access would not be necessarily result in improved dial-up connection speeds. Moreover, because it is unclear, based on the record before us, whether carriers have deployed loops that meet the proposed voice grade bandwidth, we, like the Joint Board, are concerned that redefining the definition of voice grade access in this manner could render existing wireline ETCs ineligible for support and preclude wireless carriers from being designated ETCs. We agree with the Joint Board that redefining voice grade access in this manner would not serve the public interest.<sup>60</sup>

## J. Transport Costs

27. The Commission agrees with the Joint Board that the list of supported services should not be expanded to include transport costs at this time.<sup>61</sup> "Transport costs" refer to two proposals

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<sup>56</sup> *Recommended Decision* at paras. 35-36.

<sup>57</sup> *Recommended Decision* at para. 35.

<sup>58</sup> *Recommended Decision* at para. 22.

<sup>59</sup> *Recommended Decision* at para. 21.

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<sup>60</sup> *Recommended Decision* at paras 22-25.

<sup>61</sup> *Recommended Decision* at paras. 56-57.

raised in response to the Joint Board's *Public Notice*: first, to modify the definition of "access to interexchange service" to include the use of transport facilities in insular areas and second, to provide universal service funding to IXC's in Alaska for transport costs needed to support 56kbps data transmissions.<sup>62</sup> No commenter in response to the *Notice* argued for the addition of transport costs to the list of supported services or supplemented the record analyzed by the Joint Board. Accordingly, we agree with the Joint Board and find that the record is inadequate to determine whether there is need for such support and what the cost of providing such support would be.<sup>63</sup> We also agree with the Joint Board that allowing funding for transport to enable 56 kbps transmissions would be inappropriate given the decision not to expand or modify the definition of voice grade access as described above.

#### **K. Rural Wireless ETC Category**

28. We agree with the Joint Board recommendation that a new rural wireless ETC category should not be created to enable wireless carriers to receive support for the implementation of CALEA and E911 solutions.<sup>64</sup> The Joint Board found that creating different criteria for a subset of ETCs would be contrary to the intent of section 214 and may not be competitively neutral. No commenters in response to the *Notice* disagreed with the Joint Board's conclusion. Accordingly, we agree with the Joint Board that we should not create a subcategory of ETC for rural wireless carriers.

#### **L. Technical and Service Quality Standards**

29. The Commission agrees with the Joint Board and the vast majority of commenters that we should not impose technical or service quality standards as a condition to receive universal service support.<sup>65</sup> We are not persuaded that there is a need to adopt federal technical and service quality standards at this time.<sup>66</sup> In response to the *Notice*, no commenter provided specific examples of states that lack jurisdiction over certain carriers or service quality problems that would necessitate a federal standard. Based on the record before us in this proceeding, we find no reason to supplant the states' role of implementing and enforcing technical and service quality standards.

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<sup>62</sup> *Recommended Decision* at para. 55.

<sup>63</sup> *Recommended Decision* at para. 56.

<sup>64</sup> *Recommended Decision* at para. 59.

<sup>65</sup> *Recommended Decision* at para. 63. See also Dobson Comments at 14. NASUCA Comments at 7 (agreeing with the Joint Board that further information is needed on whether the Commission may or should adopt service quality standards where states lack jurisdiction over carriers).

<sup>66</sup> But see MUST Comments at 4. (arguing generally, federal standards must, at a minimum, cover the instances where states lack jurisdiction over certain carriers). See also Valor Reply Comments at 4-5.

## M. Equal Access

30. The Joint Board was unable to reach agreement on whether equal access should be added to the list of supported services.<sup>67</sup> Consequently, the *Recommended Decision* presented the arguments of the Joint Board members in favor of and opposed to adding equal access to the definition of supported services. Comments received in response to the *Notice* were similarly split.

31. Parties in favor of adding equal access argue all ETCs that receive high cost support in a particular area should be required to provide comparable services. Specifically, they argue regulatory parity requires wireless ETCs to provide equal access, because the majority of incumbent LEC/ETCs offer it.<sup>68</sup> Additionally, these parties assert that the current definition of supported services, when combined with the Commission's policies for calculating competitive ETC high-cost support, provides advantages to wireless ETCs. Specifically, they allege wireless ETCs receive a windfall when they receive support based on the incumbent ETC's costs, as these costs include the cost of providing equal access, a service not provided by wireless ETCs.<sup>69</sup> The parties also argue that competition in high-cost areas will be enhanced with equal access requirements for universal service support, and that consumers will benefit.<sup>70</sup> Furthermore, they assert that when considering the totality of the circumstances and the four section 254 criteria for determining what services should be supported, equal access should be added to the list of supported services.<sup>71</sup> Finally, they argue that section 332(c)(8) of the Act does not prevent the Commission from requiring CMRS carriers to provide equal access in order to receive universal service funds.<sup>72</sup> They contend this provision only prevents the Commission from requiring CMRS carriers to provide equal access as a general condition of mobile service.

32. Parties in opposition to adding equal access to the list of supported services assert that the costs of adding equal access to the list of supported services would hinder competitive ETCs from entering or continuing to serve some geographic areas.<sup>73</sup> These parties also claim that

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<sup>67</sup> *Recommended Decision* at para. 68. Section 254(a)(2) requires the Commission to implement Joint Board recommendations within one year of receipt. We find that the statute could be reasonably interpreted as not requiring the Commission to act regarding equal access at this time, because the Joint Board did not provide a recommendation that could be implemented by the Commission. Rather than recommending specific action, the Joint Board only offered two points of view for consideration with regards to equal access.

<sup>68</sup> See, e.g. MUST Comments at 10; NTCA Comments at 6-7; Nebraska Companies Comments at 4.

<sup>69</sup> See, e.g. NTCA Comments at 6; Small Rural ILEC Group Comments at 9.

<sup>70</sup> See, e.g. Fred Williamson Comments at 16.

<sup>71</sup> See, e.g. GVNW Comments at 2; MUST Comments at 10; NTCA Comments at 2-3.

<sup>72</sup> See, e.g. GVNW Comments at 3.; MUST Comments at 10; NASUCA Comments at 3; NTCA Comments at 4.; Nebraska Rural Independent Companies (Nebraska Companies) Comments at 2.

<sup>73</sup> United States Cellular Corporation Comments at 9. Dobson Reply Comments at 9.

the addition to the list of supported services would be inconsistent with the congressional intent of section 332(c)(8) of the Act,<sup>74</sup> and would not further the competitive goals of the Act.<sup>75</sup> Finally, they argue that equal access fails to meet the section 254(c) statutory criteria.<sup>76</sup>

33. Because critical arguments in favor of adding equal access are related to the ETC designation process and the calculation of support for competitive ETCs, both of which are within the scope of the *Portability Proceeding*, we make no decision regarding equal access at this time. We agree with commenters like Verizon Wireless and T-Mobile that some of the arguments raised in favor of adding equal access are directly related to the methodology for calculating universal service support provided to competitive ETCs.<sup>77</sup> Given the scope of the *Portability Proceeding*, we believe that a determination regarding equal access would be premature at this time.<sup>78</sup> For example, if the Commission were to determine that competitive ETCs' support should be based on their own costs, as opposed to incumbents', many of the arguments for adding equal access could be moot. Accordingly, we defer consideration of this issue pending resolution of the *Portability Proceeding*.

34. We note that the outcome of the Commission's pending proceeding examining the rules relating to high-cost universal service support in competitive areas could potentially impact, among other things, the support that competitive ETCs may receive in the future. As such, we recognize that any grant of competitive ETC status pending completion of that proceeding will be subject to whatever rules are established in the future. We intend to proceed as expeditiously as possible to address the important and comprehensive issues that are being raised.

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<sup>74</sup> See, e.g. CTIA Comments at 3; Dobson Comments at 15; Florida PSC Comments at 6; Nextel Comments at 3; Rural Cellular Association and Alliance of Rural CMRS Carriers (RCA-ARC) Comments at 2-4; Sprint Comments at 4; Verizon Wireless Comments at 2.

<sup>75</sup> See, e.g. CTIA Comments at 10; Dobson Comments at 18; Florida PSC Comments at 6-7; New York State DPS Comments at 7; RCA-ARC Comments at 4-6; Western Wireless Comments at 3-6. (Arguing that imposing equal access requirements will deter potential carriers from entering or continuing service in high cost areas due to the expenditures necessary to provide equal access).

<sup>76</sup> See, e.g. CTIA Comments at 5-10; Dobson Comments at 16-20; Nextel Comments at 10-14; Western Wireless Comments at 8-11.

<sup>77</sup> The record in this proceeding does not contain adequate information on the ongoing costs of providing equal access, so we are unable to determine the amount of high-cost support based on the cost of providing equal access.

<sup>78</sup> We also note that the Commission released a Notice of Inquiry requesting comment with regard to whether the equal access obligations should be withdrawn for wireline carriers. See *Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, Notice of Inquiry, CC Docket No. 02-39, 17 FCC Rcd 4015 (2002).

#### IV. PETITIONS FOR RECONSIDERATION

##### A. Background

35. In the *Universal Service First Report and Order*, the Commission found that voice grade access to the PSTN should occur within the frequency range of 500 Hertz and 4,000 Hertz.<sup>79</sup> In the *Fourth Order on Reconsideration*, the Commission reconsidered this definition because it found it would require ETCs to comply with a voice grade access standard more exacting than current industry standards. The Commission redefined the minimum bandwidth for voice grade access as 300 to 3,000 Hertz.<sup>80</sup> North Dakota Public Service Commission, South Dakota Public Utilities Commission and Washington Utilities and Transportation Commission each filed petitions for reconsideration of the *Fourth Order on Reconsideration*.<sup>81</sup> These petitioners asked the Commission to redefine the minimum bandwidth for voice grade access to the PSTN as 300 to 3,500 Hertz. They asserted generally that this definition was more consistent with the level of service experienced in urban areas.

##### B. Discussion

36. We deny the petitions for reconsideration of the *Fourth Order on Reconsideration* filed by North Dakota Public Service Commission, South Dakota Public Utilities Commission and Washington Utilities and Transportation Commission. As noted above, the Joint Board expressly sought comment on this issue in this proceeding and recommended that the Commission not modify its standard for voice grade access. Moreover, no commenter in this proceeding submitted arguments in favor of modifying this definition.<sup>82</sup> Accordingly, for the

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<sup>79</sup> *First Report and Order*, 12 FCC Rcd 8811, para. 64.

<sup>80</sup> See *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5328, para. 16 (1997) (*Fourth Order on Reconsideration*).

<sup>81</sup> *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review For Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, Petition for Reconsideration, North Dakota Public Service Commission, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, (Feb. 12, 1998); *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review For Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, Petition for Reconsideration, South Dakota Public Utility Commission, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, (Feb. 12, 1998); *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review For Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, Petition for Reconsideration, Washington Utilities and Transportation Commission, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, (Feb. 12, 1998).

<sup>82</sup> See *supra* para. 26.



reasons stated above,<sup>83</sup> we retain the existing definition of voice grade access to the PSTN and deny the petitions for reconsideration of the *Fourth Order on Reconsideration*.

## V. PROCEDURAL ISSUES

### A. Final Regulatory Flexibility Act Analysis

#### 1. Need for, and Objectives of, the Report and Order

37. As required by the Regulatory Flexibility Act (RFA),<sup>84</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice*.<sup>85</sup> The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>86</sup>

38. In this Order, we adopt the Joint Board's recommendations to retain the existing list of services supported by universal service. Accordingly, we do not adopt any changes to our universal service rules or reporting burdens.

#### 2. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

39. The Commission did not receive any comments in response to the IRFA.

#### 3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

40. The Commission did not adopt or modify any rules in this Order.

#### 4. Description of Reporting, Recordkeeping, and Other Compliance Requirements

41. There are no new or changed reporting requirements adopted in this Order.

#### 5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternative Considered

42. Because no rules are adopted or modified in this Order, there are no economic

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<sup>83</sup> *Id.*

<sup>84</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>85</sup> *Notice* at paras. 3-22.

<sup>86</sup> See 5 U.S.C. § 604.

impacts created by this Order.

## **6. Report to Congress**

43. The Commission will send a copy of this Order, including the FRFA analysis, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>87</sup> In addition, the Commission will send a copy of this Order, including this FRFA analysis, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA analysis (or summaries thereof) also will be published in the Federal Register.<sup>88</sup>

## **B. Paperwork Reduction Act Analysis**

44. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

## **C. Further Information**

45. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (tty).

46. For further information, contact Elizabeth Yockus at (202) 418-1381 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

## **VI. ORDERING CLAUSES**

47. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, this ORDER AND ORDER ON RECONSIDERATION IS ADOPTED.

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<sup>87</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>88</sup> See 5 U.S.C. § 604(b).

48. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, the petitions for reconsideration of the *Fourth Order on Reconsideration* filed by the North Dakota Public Service Commission, South Dakota Public Utilities Commission, and the Washington Utilities and Transportation Commission are DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Parties Filing Comments

<u>Commenter</u>	<u>Abbreviation</u>
American Public Communications Council	APCC
AT&T Corp.	AT&T
BellSouth Corporation	BellSouth
Cellular Telecommunications & Internet Association	CTIA
Centennial Communications Corp.	Centennial
Dobson Communications Corp.	Dobson
Florida Public Service Commission	FPSC
Fred Williamson and Associates, Inc.	FW&A, Inc.
GVNW Consulting, Inc.	GVNW
MCI	
Montana Universal Service Task Force	MUST
National Association of State Utility Consumer Advocates	NASUCA
National Telecommunications Cooperative Association	NTCA
Nebraska Rural Independent Companies	Nebraska Companies
New York Dept. of Public Service, State of	NYDPS
Nextel Communications, Inc. and Nextel Partners, Inc.	Nextel
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
Qwest Communications International Inc.	Qwest
Rural Cellular Association and Alliance of Rural CMRS Carriers	RCA & ARC
SBC Communications, Inc.	SBC
Small Rural ILEC Group	Rural Group
Sprint Corporation	Sprint
United States Cellular Corporation	USCC
United States Conference of Catholic Bishops, Alliance for Community Media, Appalachian People's Action Coalition, Center for Digital Democracy, The Community Technology Institute, Consumer Action, Consumer Federation of America, Consumers Union, Edgemont Neighborhood Coalition, The Migrant Legal Action Program,	

The National Coalition for the Homeless And The National Community Voice Mail Federation	USCCB <i>et al.</i>
United States Telecom Association	USTA
Valor Telecommunications Enterprises, LLC	Valor
Verizon Telephone Companies	Verizon
Verizon Wireless	Verizon Wireless
Western Wireless Corp.	Western Wireless

**Parties Filing Reply Comments****Commenter****Abbreviation**

Alliance of Rural CMRS Carriers	ARC
AT&T Corp.	AT&T
Dobson Communications Corporation	Dobson
Fred Williamson and Associations, Inc.	FW&A
Chouteau Telephone Company	
H&B Telephone Communications, Inc.	
Moundridge Telephone Company, Inc.	
Pine Telephone Company, Inc.	
Pioneer Telephone Association, Inc.	
Totah Telephone Company, Inc.	
Twin Valley Telephone, Inc.	
GVNW Consulting, Inc.	GVNW
Minnesota Independent Coalition	MIC
National Association of State Utility Consumer Advocates	NASUCA
Nextel Communications, Inc. and Nextel Partners, Inc.	Nextel
Organization for the Promotion and Advancement of Small Telecommunications Companies	OPASTCO
T-Mobile USA, Inc.	T-Mobile
Valor Telecommunications Enterprises, LLC	Valor
United States Telecom Association	USTA
Verizon	Verizon
WorldCom, Inc., D/B/A, MCI	MCI

**SEPARATE STATEMENT OF  
CHAIRMAN MICHAEL K. POWELL**

*Re: Federal-State Joint Board on Universal Service*

I am pleased that today the Commission addresses the list of supported services that our universal service mechanism supports. We could not have reached this decision without input from the Federal – State Joint Board on Universal Service. The Joint Board's recommendation greatly informed today's decision and I wish to thank each member of that body for their contributions.

Perhaps one of the more contentious questions on which the Joint Board sought comment is whether the Commission should alter the manner in which competitive eligible telecommunications carriers (ETCs) receive universal service support. In connection with this question, some have proposed that ETCs provide equal access to providers of long distance services as a condition of receiving support. I have grave doubts about imposing such a requirement and believe that doing so may well run afoul of the statutory scheme. Reflexively imposing equal access on wireless carriers fails to appreciate the distinct market and competitive conditions of CMRS providers. I greatly appreciate the support of my colleagues in reaching today's decision to consider this issue as part of the *Portability Proceeding* pending before the Joint Board and the Commission. That rulemaking will examine the process for designating ETCs and rules relating to the funding of ETCs in rural areas. I look forward to further consideration of the impact of these rules - particularly as they relate to wireless carriers - in that proceeding. We should complete it expeditiously.

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**JOINT STATEMENT OF COMMISSIONERS  
KATHLEEN Q. ABERNATHY AND JONATHAN S. ADELSTEIN**

*Re: Federal-State Joint Board on Universal Service*

Through this order we address the core of our federal universal service program by determining those most essential services that warrant funding. Our list of supported services establishes a baseline of communications services for the American public, no matter their income or location. Our still-difficult task was made easier by the valuable contribution of the Federal-State Joint Board on Universal Service, whose Recommended Decision provided critical guidance and formed the basis of our decision. For this contribution, we thank our colleagues on the Federal-State Joint Board.

We write this joint statement as colleagues on the Joint Board to discuss two of the more difficult issues addressed in this order. The first concerns the proposal to require eligible telecommunications carriers (ETCs) to provide equal access to providers of long distance services. The second concerns the proposal to add advanced services to the list of supported services.

With respect to equal access, we support the decision to consider this issue as part of the *Portability Proceeding* pending before the Joint Board. That rulemaking examines the rules relating to the impact of funding competitive ETCs in rural areas. One of the principal issues on which the Joint Board has sought comment is whether the Commission should alter the manner in which competitive ETCs receive universal service support. We believe that commenters have raised valid concerns about the “identical support” rule, and many of their arguments intersect with positions advanced in support of an equal access requirement. For example, several parties persuasively argue that competitive ETCs should receive funding based on their own costs, rather than the incumbent LEC’s costs. If the Joint Board were to recommend and the Commission were to adopt such a proposal, that would address several of the arguments advanced in favor of adding equal access to the list of supported services.<sup>1</sup>

We are committed to addressing any inappropriate disparities in treatment of incumbent and competitive ETCs. We write jointly to emphasize that the Joint Board’s top priority is to provide a recommended decision in the *Portability Proceeding* as expeditiously as possible and we are determined to move forward quickly. The stresses on the universal service fund created by the increase in support provided to competitive and incumbent ETCs are of critical

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<sup>1</sup> Parties have advanced arguments in favor of an equal access obligation that extend beyond the alleged competitive disparities produced by our rules. For example, in support of their argument that equal access is essential to education, public health, and public safety, proponents argue that it provides consumers with a valuable benefit — the ability to choose long distance providers. Others stress that any decision on supported services should not inadvertently raise the costs to the universal service fund without commensurate benefits to consumers. Our consideration of these issues can only be improved by considering the record developed in the *Portability Proceeding*.

importance. We must ensure that companies that have traditionally invested in infrastructure to serve rural and high cost areas are not subject to a framework that unintentionally undercuts their ability to perform their critical universal service function. We also should proceed swiftly in light of the fact any grants of ETC status during the pendency of that proceeding will be subject to any new or modified rules. Moreover, we are concerned that the ETC designation process — and in particular the public interest analysis — has been conducted in an inconsistent and sometimes insufficiently rigorous manner. Providing federal guidance on these issues will afford regulatory certainty to competitive ETCs, as well as incumbent LECs. It will also help stabilize the funding mechanism. We have accordingly organized a public forum, to be held on July 31, 2003, which will help the Joint Board further develop the record, ask questions of key players, and hopefully help build consensus on appropriate rule changes.

We also wish to note that our decision to refrain from adding advanced services to the list of supported services should in no way cast doubt on the importance of such services to rural America. Based on the record before us, and in accordance with the recommendation of the Joint Board, the Commission has found that a substantial majority of residential consumers have not yet subscribed to advanced services and that such services, while increasingly important, do not yet meet the standard set out in section 254(c)(1). We note that Congress has made clear that universal service is an evolving level of telecommunications services, so it is important that we adopt a framework that permits our universal service programs to reflect advances in the marketplace. We also reaffirm that ETCs will have access to universal service support for facilities (such as loops) that are used to provide both supported services and unsupported services. The Joint Board and the Commission have repeatedly emphasized that the absence of direct support for advanced services does not impose any barrier to the use of universal service funding to upgrade and maintain integrated facilities capable of supporting advanced telecommunications networks. This policy faithfully advances Congress's core goal of ensuring access to advanced telecommunications and information services throughout the nation.

In closing, we reiterate our thanks to our Joint Board colleagues for their valuable contributions to date, and we look forward to working together and with the rest of the Joint Board on the critical issues pending in the *Portability Proceeding*.



**SEPARATE STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS,  
APPROVING IN PART, CONCURRING IN PART**

Re: *Federal-State Joint Board on Universal Service*

At the core of federal universal service policy is the principle that all Americans, no matter who they are or where they live, should have access to reasonably comparable services at reasonably comparable rates. Congress memorialized this bold commitment to universal service in section 254 of the Communications Act. Congress also wisely directed the Joint Board to recommend periodically changes to the list of services supported by universal service, in order to ensure that this principle retains meaning as time and technologies advance.

The hard work and frank discussions of the Joint Board inform today's decision to retain the current list of supported services. The Commission is richer for the Joint Board's efforts. Although I no longer serve as a federal member of the Joint Board, I participated in last year's Recommended Decision. I write separately here to highlight concerns that lead me to concur in two parts of today's order.

*Advanced Services*

I respect that the Commission adheres to the recommendation of the Joint Board concerning advanced services. Nonetheless, I am disappointed with the majority's conclusion that advanced services are not essential for educational, public health or public safety purposes at this time. I am even more troubled by the conclusion that adding advanced services to the list of supported services would be contrary to the public interest.

The evidence is all around us: advanced services become more and more essential with each passing day. Broadband is a key and growing component of our nation's systems of education, commerce, employment, health, government and entertainment. Congress recognized the increasing importance of advanced services when it commanded the Commission and our state counterparts to encourage the deployment of advanced telecommunications capability on a reasonable and timely basis to all Americans. Congress also provided the Joint Board and the Commission with the guiding principle that "access to advanced telecommunications and information services should be provided in all regions of the Nation."

Against this background, each and every citizen of our country has a right to look forward to a time when we all have access to advanced services. We stall the arrival of that day when, as the majority does here, we fail to acknowledge what history teaches us about the ability of market forces alone to accomplish this feat. Following the invention of the telephone, many communities, especially those in rural areas, were left behind—more isolated than before and with comparatively fewer economic opportunities. Now telephone service is available in nearly 96 percent of households in this country. This penetration rate is among the highest in the world, and it is because of our national commitment to universal service, not despite it. When it comes

to advanced services, why then do we turn our backs on what has been historically so effective? And what supports our assumption that the market alone will accomplish deployment? This flies in the face of our experience with basic telephone service, what we presently know about the cost of advanced services deployment and what many business leaders tell me.

Last year, as a member of the Joint Board, I called for a proceeding to examine the steps we should take to promote the deployment of advanced services and the role of universal service in that effort. This should be one of the Commission's highest public interest priorities. Without such a serious national dialogue, we risk failing our charge to deliver the infrastructure of the Information Age to everyone, everywhere in America.

Finally, I note with great concern that if the Commission adopts its tentative conclusion from the *Wireline Broadband Notice* that broadband Internet access is an information service with a telecommunications component, broadband Internet access could *never* be supported by universal service. The Joint Board concluded as much in last year's Recommended Decision. This issue is not before us here, but it hovers in the background of our action today and clouds the future of universal access to broadband service for consumers in rural and high-cost areas.

#### *Equal Access*

As a member of the Joint Board, I voted to include equal access in the list of supported services. I acknowledged at the time that I believed it was a close call. I still think this is the case. The majority here decides that we should address the issue of equal access in our upcoming universal service portability proceeding. While it makes sense to address these critical issues comprehensively, it only does so if that process receives expeditious treatment at the Joint Board and at this Commission. I concur on the assumption that it will receive the high priority it so clearly deserves.

Last fall, the Commission asked the Joint Board to undertake a substantial review of key Commission rules relating to high-cost universal service support mechanisms. We specifically asked this body to examine our rules governing support in competitive study areas and for second lines. We also requested that the Joint Board review the process for designating eligible telecommunications carriers. For the Commission to honor its statutory duty to preserve and advance universal service, we will have to tackle these issues as soon as the Joint Board tenders its recommendation. When we do, the Commission may alter the field on which all actions involving competitive universal service support are played out. Instead of progressing in a piecemeal fashion by considering equal access alone today, the majority makes a strong case that the better outcome is deferring this issue to our larger, integrated proceeding.

I caution that deferral is not the same thing as denial. I remain concerned that competitive eligible telecommunications carriers not offering equal access may deprive rural consumers of choice, quality and the full benefits of competition. Furthermore, if these issues gather the dust of regulatory inaction at either the Joint Board or the Commission, I stand willing to revisit the decision made here today.

**SEPARATE STATEMENT OF  
COMMISSIONER KEVIN J. MARTIN  
APPROVING IN PART, DISSENTING IN PART**

*Re: Federal-State Joint Board on Universal Service*

Today's decision adopts many of the Federal-State Joint Board's recommendations on which services should be supported by the federal universal service program. This decision reaffirms our commitment to preserve and advance universal service by ensuring the affordability and availability of telecommunications services in all regions of the Nation.

As I have stated before, I would have preferred to pursue a further Notice to obtain more data on how, and to what extent, the federal universal service support mechanism could assist the deployment of advanced services, or at least the removal of barriers to such deployment, particularly in rural, remote and high cost areas throughout the country.<sup>1</sup> This inquiry would assist our continuing effort to ensure that all Americans, including those in rural and high cost areas, have access to these services.

I also disagree with the decision to postpone the determination of whether equal access should be added to the list of supported services. In my view, the record in this proceeding provides the Commission with sufficient data to decide whether equal access meets the statutory requirements to be designated as a supported service.<sup>2</sup>

As I have previously, I support inclusion of equal access in the list of supported services. Equal access provides a direct, tangible consumer benefit that allows individuals to decide which long distance plan, if any, is most appropriate for their needs. An equal access requirement would allow ETCs to continue to offer bundled local and long distance service packages, while also empowering consumers with the ability to choose the best calling plan for their needs.

An equal access obligation is also fully consistent with the Commission's existing policy of competitive and technological neutrality amongst service providers, facilitating competition on the basis of price and service quality for comparable service offerings.

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<sup>1</sup> See Separate Statement of Commissioner Kevin J. Martin, Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (rel. July 10, 2002).

<sup>2</sup> See 47 U.S.C. 254(c)(1).